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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re the Marriage of DANIELLE J. and DONALD E. EMEL, JR.	
DANIELLE J. DUPERRET, Appellant, v. DONALD E. EMEL, JR., Respondent.	F058117 (Super. Ct. No. FL2557) **OPINION**

APPEAL from a judgment of the Superior Court of Tuolumne County. Douglas C. Boyack, Judge.

Danielle J. Duperret, in pro. per., for Appellant.

Donald E. Emel, Jr., in pro. per., for Respondent.

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Danielle J. Duperret appeals from an order of the family court reducing the amount of child support that Donald E. Emel, Jr., is required to pay to support their two minor children. Duperret primarily argues that the family court order was not supported by substantial evidence. We must reject Duperret's arguments because she has failed to provide an adequate record on appeal.

FACTUAL AND PROCEDURAL SUMMARY

Duperret has primary custody of two minor children of the marriage. As a result, Emel is paying child support to Duperret.[1] On April 8, 2009, Emel filed a motion requesting modification of his child support obligations. Duperret filed a 38-page opposition to the motion. The relevant portion of the opposition stated that Duperret consented to the guideline support. The remainder of her opposition addressed perceived wrongs she suffered at the hands of Emel, including his abuse of both Duperret and the children, his litigious nature, his need to ruin her life, and the psychological damage his conduct caused Duperret.

The issue, as framed by Duperret, in both the family court and on appeal, relates to Duperret's ability to earn income. Duperret argued she is disabled because of the psychological damage inflicted on her by Emel and provided documentation from her therapist to substantiate her claim. Duperret argued that her disability, and other factors, prevented her from working.

Emel argued that Duperret could earn a substantial income, but chose not to work. Therefore, according to Emel, the family court should have taken Duperret's potential income into consideration when performing the guideline calculations.

[1]There are also adult children of this marriage. Emel is not paying child support for these children. They are not involved in this appeal.

The family court ordered Emel to pay Duperret child support of $1,256 per month, a reduction from a prior order awarding her $1,662 per month. In reaching this conclusion, the family court attributed income of $2,100 per month to Duperret.

Duperret argued in a motion for reconsideration that Emel failed to comply with statutory requirements by failing to establish his income, and the trial court relied on a document that failed to consider all of the relevant factors. Of note, in this document Duperret stated that the family court attributed to her a monthly income of $2,500 in 2008 when calculating child support, and she did not object to that finding. The record does not contain any indication that the family court considered or ruled on the motion.

DISCUSSION

As is obvious from the above summary, the record provided by Duperret to this court is minimal. From this record, Duperret appears to argue the family court erred because (1) the order was not supported by substantial evidence because she could not find suitable employment; (2) Emel failed to provide a current income and expense declaration with his motion, thus rendering it procedurally defective; (3) it failed to issue a statement of decision; and (4) the order violated Family Code section 4065.[2]

The difficulty with Duperret's first two arguments is the lack of a record supplied with the appeal. It is Duperret's obligation to provide a record that will allow us to review her claims. (*People v. Akins* (2005) 128 Cal.App.4th 1376, 1385.) The failure to do so may result in the issue being forfeited. (*Ibid*.) There is no reporter's transcript, and the documents provided suggest only the reason for Emel's motion. There is no indication in Emel's moving papers on what change in circumstances occurred that would justify a change in child support.

[2]All further statutory references are to the Family Code unless otherwise noted.

The responsive declaration filed by the Tuolumne County Department of Child Support Services appears to indicate that the change in circumstances was that the children were now spending more time with Emel than computed in the last child support order. The county's declaration states, "Assuming no changes to either party's financial status and only figuring in the new timeshare as represented by [Emel], guideline support is $1,256.00 per month. However, if either party has changes to his or her financial circumstances then a new Income and Expense Declaration should be submitted to the court and served on other parties …." If this declaration is accurate, and we have no basis to conclude otherwise, then Emel's child support obligation was not reduced because of a change in financial condition, and financial disclosures were not required. (See Cal. Rules of Court, rule 5.128(a) ["A current *Income and Expense Declaration* … must be served and filed by any party appearing at any hearing at which the court is to determine an issue *as to which such declarations would be relevant*"].) (Second italics added).)

To the extent that Duperret may be arguing the amount of child support paid by Emel should have been increased because her earning capacity was less than calculated by the family court, we must reject the argument. Duperret *did not* file an income and expense declaration as required by California Rules of Court, rule 5.128(a). Accordingly, the family court did not have adequate information on which to change its previous conclusions. (*In re Marriage of Tydlaska* (2003) 114 Cal.App.4th 572, 576.)

To the extent that Duperret was relying on the voluminous documentation she provided, her reliance is misplaced. She failed to include all of the relevant documentation in the record on appeal. The reports she provided indicate both that she was working, although "underemployed," and that another report or letter had been prepared regarding her earning potential. There is nothing in the record to indicate her actual employment or earnings, nor is the report/letter included in the record. While we acknowledge that Duperret is very critical of this letter, we cannot evaluate her criticisms

without access to the document. Duperret's failure to provide a complete record requires we deem this argument, if she is making it, forfeited.

Duperret's argument that there was not substantial evidence in the record to support the family court's order also must be rejected. It appears the family court based its order on Emel's claim that the time he spent with the children increased, thus reducing his support obligation. Emel's application stated that he spends one week in every six with the children. Emel used Judicial Council of California form application FL-310 (rev. Jan. 1, 2007). The record includes only the first page of this two-page form. Presumably, Emel completed the second page, which includes a line for his signature under penalty of perjury. The amount ultimately ordered by the family court is consistent with the calculation of the Tuolumne County Department of Child Support Services using the information provided by the parties. These statements constituted substantial evidence to support the family court's order, especially since nowhere in Duperret's opposition did she contest the statements.

Finally, we also reject Duperret's last two arguments. There is no indication in the record that either party requested a statement of decision. As section 3654 states, a statement of decision is required only if requested by a party. Therefore, the lack of a statement of decision is not error. Similarly, there is no merit to the contention that the family court failed to comply with section 4065. This section permits the parties to stipulate a specific amount for child support, but provides that amount must exceed the guideline unless certain factors are established by the parties. The parties did not stipulate to child support in this matter; it was a contested hearing. Therefore, section 4065 is inapplicable.

DISPOSITION

The order appealed from is affirmed. Emel is awarded his costs on appeal.

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CORNELL, Acting P.J.

WE CONCUR:

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DAWSON, J.

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HILL, J.